



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX – PACIFIC SOUTHWEST REGION
75 Hawthorne Street
San Francisco, CA 94105-3901

VIA EMAIL

May 25, 2021

Mr. Charles Berry
Utility Director
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436-8001

Re: Administrative Order on Consent, Docket No. CWA-309(a)-20-006
Disapproval of Proposed Enforcement Response Plan

Dear Mr. Berry:

The U.S. Environmental Protection Agency (“EPA”) has reviewed the City of Lompoc’s Enforcement Response Plan (“ERP”), submitted pursuant to Paragraph 38 of the Administrative Order on Consent (“AOC”) referenced above. Through this letter, EPA is disapproving the ERP due to certain elements of the ERP that do not satisfy the requirements of the AOC and the federal pretreatment regulations in Title 40 of the Code of Federal Regulations (“CFR”) Part 403.

Disapproved components

1. The Proposed ERP does not describe the statutorily required penalty authority. EPA disapproves the proposed ERP because it fails to conform with the penalty authority described in federal regulations. 40 CFR 403.8(f)(1)(vi)(A) states “all POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.” However, Section 4.3 of the proposed ERP states “Administrative fines shall be assessed through enforcement orders and in amounts according to the guide below (pursuant to California Government Code Section 53069.4 and subdivision (b) of Government Code Section 36900): A fine *not exceeding* one hundred dollars (\$100) for a first violation. A fine *not exceeding* two hundred dollars (\$200) for a second violation of the same ordinance within one year. A fine *not exceeding* five hundred dollars (\$500) for each additional violation of the same ordinance within one year” (emphasis added). Section 4.3 clearly limits the ability of the City to assess a penalty up to \$1,000 a day for each violation by IUs. Lompoc shall revise the ERP to ensure it is in agreement with 40 CFR 403.8(f)(1)(vi)(A), and that its Sewer Use Ordinance also has the same language.
2. The proposed ERP does not correlate magnitude of violation with magnitude of enforcement response. EPA disapproves the ERP because it does not explain that serious or chronic violations will receive the appropriate level of enforcement response. According to 40 CFR

403.8(f)(5) and Paragraph 38 of the AOC, the ERP shall contain detailed procedures indicating how the POTW will “respond to instances of IU noncompliance...” The proposed ERP does not contain enforcement responses that scale proportionally to the magnitude of the pretreatment violations. More serious violations (i.e. damage to the POTW or environment) should receive an enforcement response that correlates in magnitude, in terms of both consequences to the violating party and relief sought to rectify the violations. It may be useful to group violations by severity (i.e., minor, intermediate, and major) due to the potential impact to the POTW or the environment and match it to the corresponding grouping of enforcement actions (minor, intermediate, and major).

One example of the deficiency of the ERP appears in Table 2, Item #3B, which states that when a “discharge exceeds permit or other discharge limit resulting in damage to the sewerage system or environment”, the City will invoke emergency enforcement as necessary to abate discharge and proceed *with any* (emphasis added) of the following: a) Emergency suspension of discharge; b) Issue Notice of Violation. Conduct sampling, monitoring, or inspections as appropriate and may assess Cost Recovery Fee; c) Issue Enforcement Order and may assess Administrative Fine; d) Issue Administrative Hearing Order; e) Terminate service/revoke permit; f) Civil/criminal action. Issuing a NOV or only requiring sampling does not correspond with the severity of causing harm to the POTW/environment, does not send a message of deterrence, and does not require the IU to implement relief to rectify and prevent future violations. Without further explanation of how Lompoc will address various types of violations in a proportional manner, EPA cannot approve the ERP.

3. The proposed ERP does not include clear details regarding enforcement escalation. EPA disapproves the proposed ERP due to the lack of detailed procedures regarding the escalation of enforcement responses and the types of escalating enforcement responses. According to 40 CFR 403.8(f)(5)(ii), the ERP shall “[d]escribe the types of escalating enforcement responses the POTW will take in response to all anticipated types of Industrial User violations and the time periods within which responses will take place.” This component is missing in the proposed ERP. While it is related to the component described under #2 above, this issue concerns the process. The ERP should address the order and type of enforcement actions in some detail.

Section 4.1 and Table 1 of the EPR provide “suggested levels of enforcement escalation” but does not provide enough specificity or detail. Table 2 lists possible enforcement actions for violations but it is unclear if the possible enforcement actions are listed in order of priority, environmental harm, or deterrence value. Please revise the ERP to include types of escalating responses and describe the situations that necessitate escalation, for anticipated types of IU violations, with time periods for each response.

Another example appears in Section 4.4 of the ERP which states that for instances of continued noncompliance, failure to follow an enforcement order, or pay severely delinquent service fees and/or administrative fines, the City *may* respond with any or any combination of the following actions: Administrative fines; Terminate user discharge permit; Terminate service; Pursue civil action and penalties; Pursue criminal action and penalties.” This allows for too wide a range of discretionary responses and a possible disparity in enforcement responses between Industrial Users (“IUs”) for similar violations. Similar language can be found throughout Section 4, Section 5, and Table 2. We suggest removing language that indicates the possibility of an

enforcement action/type (may, can, etc.) and instead using prescriptive language (shall, will, etc.) when discussing enforcement responses for each type of violation to reduce the chances for disparity in enforcement and minimize subjectivity.

Lastly, while this issue is not the basis for disapproval, EPA takes this opportunity to reinforce that the proposed ERP does not reflect the language or authorities in the current SUO, Lompoc Municipal Code Chapter 13.16. In revising and referencing the SUO and ERP, please note that both 40 CFR 403.8 (f)(1) and (f)(2) include specific requirements for legal authority regarding enforcement. Specifically, the SUO must include the explicit authority to issue all the various types of enforcement actions that are listed in the ERP, including the official(s) responsible for each type of enforcement response. The proposed changes to the SUO, previously submitted by Lompoc, and the current SUO do not include the necessary authority or list all the proposed enforcement action types for the City to implement the proposed ERP. EPA cannot approve the SUO if it does not meet the federal requirements and the proposed ERP should also include those requirements. Please see Section II of the enclosed City of North Las Vegas Enforcement Response Plan dated July 13, 2016 as an example.

Pursuant to Paragraph 44 of the AOC, the City shall address all deficiencies identified by EPA and resubmit the submittal with the relevant components for EPA's review within sixty (60) days of receipt of EPA's written disapproval. If the City would like to have a call to clarify the outstanding issues described above, please contact EPA as soon as possible. Also attached is an example ERP from the City of North Las Vegas that Lompoc may use as a guide.

If you have any technical questions about this letter, please call Michael Weiss at (415) 947-4570 or e-mail him at weiss.michael@epa.gov. Regarding legal questions, please contact Marcela von Vacano at (415) 972-3905 or vonVacano.marcela@epa.gov.

Sincerely,

ERIC MAGNAN

Digitally signed by ERIC
MAGNAN
Date: 2021.05.25 19:42:14 -07'00'

Eric Magnan, P.E.
Manager, Water Section I
Enforcement and Compliance Assurance Division

Enclosure

cc (w/enclosure by email):

Jeff Malawy, City Attorney, City of Lompoc
Jim Throop, City Manager, City of Lompoc
Dong Chon, Wastewater Supervisor, City of Lompoc
Christine Wong, Ashworth Leininger Group
Matthew Keeling, Executive Officer, Central Coast Regional Water Quality Control Board
Thea Tryon, Assistant Executive Officer, Central Coast Regional Water Quality Control Board